STATEMENT OF

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HEARING ON AMTRAK

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America's freight railroads are grateful for the opportunity to present their views as you consider the future of Amtrak and intercity passenger railroading in this country.

Although there are numerous commuter rail and subway systems in the United States, Amtrak (more formally, the National Railroad Passenger Corporation) is the sole provider of intercity passenger rail transportation. It operates over more than 22,000 route miles, carries 23 million passengers annually, and serves more than 500 stations in 46 states and the District of Columbia. Amtrak is also the nation's largest contract provider of commuter rail service for state and regional authorities, serving an additional 54 million commuter passengers per year in California, Connecticut, Maryland, Massachusetts, and Virginia. Amtrak has approximately 23,500 employees.

Amtrak could not exist without the facilities and services of freight railroads. Other than the approximately 730 route-miles Amtrak owns (primarily in the Northeast Corridor bounded by Boston and Washington, and in Michigan), Amtrak operates the remaining 97 percent of its system almost exclusively over tracks owned and maintained by our nation's privately-owned freight railroads, via mandatory access at below market rates. Freight carriers also furnish other essential services to Amtrak including train dispatching, emergency repairs, station maintenance, and, in some cases, police protection and communications capabilities.

Throughout its history, Amtrak has faced recurring questions concerning its funding needs and the proper role it should play in our nation's passenger transportation system. Today, Amtrak faces perhaps its most urgent and serious reappraisal yet.

As policymakers deliberate the future role and structure of Amtrak and intercity passenger railroading in general, they should know that freight railroads will continue to work cooperatively to help ensure that intercity passenger railroading succeeds. Freight railroads believe that intercity passenger railroading in this country has a role in alleviating highway and airport congestion, decreasing dependence on foreign oil, reducing pollution, and enhancing mobility and safety.

It is critical, however, that as you deliberate the future of Amtrak and intercity passenger rail, you fully recognize the appropriate freight railroad role in the provision of intercity passenger service.

Passenger Rail History

Immediately following the birth of our nation, economic development was concentrated along the East Coast and in areas with navigable rivers, largely because barges and ships were the only practical means available to transport people and freight long distances.

The rise of the U.S. rail industry changed that. In the second half of the 1800s, railroads allowed population centers to develop in areas previously considered inaccessible and allowed mineral, timber, and agricultural products to reach distant markets at home and abroad. Railroads were a catalyst that allowed our nation to grow.

Well into the 20^{th} century, railroads were the primary means by which people and freight were transported in this country. In 1930, for example, the rail share of both the intercity freight and passenger markets was around 75 percent. Over time, though, a number of factors, especially the enormous expansion of our nation's highway system and the development of an extensive commercial aviation industry — both accomplished with the help of hundreds of billions of dollars in government subsidies — brought enormous competitive pressures to bear on passenger railroading.

In fact, by the 1930s, passenger railroading had become clearly unprofitable. World War II brought a brief respite, but by the late 1950s, private railroads were losing $750 million per year (about $3.8 billion in 2002 dollars) in fully distributed costs on passenger service, according to an Interstate Commerce Commission (ICC) study.[1] A series of subsequent studies by others confirmed the ICC's findings. In fact, a noted transportation scholar wrote "it is no exaggeration to say that by 1958 railroad passenger service had demonstrated itself to be the most uneconomic activity ever carried on by private firms for a prolonged period."[2]

The primary reason that these massive losses continued for so long was that government regulators often made it extremely difficult for railroads to discontinue even clearly unprofitable passenger rail service. Until 1958, only state public service commissions could grant railroad requests to eliminate money-losing passenger trains — something commissioners were often loathe to do, no matter how much money the railroads were losing.

The Transportation Act of 1958 transferred to the ICC the authority to approve discontinuances of interstate passenger service, as well as appellate power over the discontinuance of intrastate trains that had been denied discontinuance by state regulators. From 1958 through mid-1967, the ICC approved the discontinuance of 490 interstate and 331 intrastate trains. Nevertheless, the passenger deficit in 1968 was not appreciably different than it had been a decade earlier.

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[1] Interstate Commerce Commission, "Railroad Passenger Train Deficit, Report Proposed by Howard Hosmer, Hearing Examiner, Assisted by Robert A. Berrien, Fred A. Christoph, and Raymond C. Smith, attorney advisers," Docket No. 31954 , 1958.

[2] George W. Hilton, *The Transportation Act of 1958*, Indiana University Press, 1969, p. 13.

By 1967, many purely local trains had been discontinued, and the railroads were pursuing the elimination of major trains that comprised the basic elements of the national passenger rail network. With fewer than 600 daily passenger trains nationally (down from more than 1,400 per day in 1958), political pressure against the cessation of passenger service intensified. In June 1968, the ICC called for more demanding legislative standards for train discontinuance, longer time periods for deliberation, and exclusive ICC jurisdiction over determinations applicable to the last train on any given route. If approved, these new standards would have made it even more difficult for railroads to eliminate unprofitable passenger service.

Looking only at incremental or avoidable costs (as opposed to fully distributed costs), the ICC found in 1969 that railroads could save $200 million (approximately $775 million in 2002 dollars) each year if they were allowed to exit the passenger business.[3]

In essence, for several decades the railroad industry was forced by various governmental bodies to lose hundreds of millions of dollars annually providing a public service that fewer and fewer people chose to use. By 1970, passenger rail ridership had plummeted to just 11 billion passenger-miles, an 88 percent decline from its 1944 peak of 96 billion, despite a 40 percent increase in U.S. population during the same period. By 1970, the cumulative passenger deficit had reached countless billions of dollars.

Unfortunately, the massive passenger losses were draining a rail system that was also facing unrelenting attack on its freight business from subsidized trucks and barges, leading to railroad bankruptcies, consolidations, service abandonments, deferred

[3] Incremental (or avoidable) costs are those direct costs which result from additional traffic/volume or which would be eliminated by the discontinuance of traffic or a particular activity. Fully distributed (or allocated) costs include incremental costs as well as a proportionate share of the fixed and common costs (including the cost of capital necessary to provide the service) allocable to the traffic or service in question.

maintenance, and general financial deterioration. By 1970, railroads' share of intercity freight ton-miles had fallen to 40 percent, down from 56 percent just 20 years earlier, and the industry's overall return on investment had fallen to 1.7 percent — less than a child could earn on a passbook savings account.

In 1970, the largest U.S. railroad, the Penn Central, went into bankruptcy. At the time, it was the largest bankruptcy in U.S. history. Not coincidentally, the Penn Central was also the largest passenger railroad in the country.

The Rail Passenger Service Act of 1970

The Rail Passenger Service Act of 1970 (RPSA) was a response to the very real possibility that the United States would soon have no intercity rail passenger service at all, and a recognition that rail passenger losses were a serious threat to the viability of freight railroading. Given the huge financial pressure they faced, it is no surprise that when the RPSA created Amtrak, railroads welcomed the opportunity to rid themselves of their hopelessly unprofitable passenger obligations.

However, the RPSA exacted a hefty price from freight railroads for the opportunity to exit the intercity passenger rail business.

First, freight railroads were required to capitalize Amtrak in cash, equipment, or services. These payments to Amtrak totaled $200 million (approximately $740 million in today's dollars).[4]

Second, the RPSA authorized Amtrak to operate wherever it wished over the privately-owned freight rail network. Amtrak was also granted the power to force freight

[4] The fee each railroad had to pay was based on each carrier's 1969 passenger services and consisted of the lesser of (1) 50 percent of the fully distributed passenger deficit; (2) 100 percent of the passenger service avoidable cost; or (3) 200% of the avoidable loss associated with passenger service over routes retained in the Amtrak system.

carriers to convey property to it if the property were necessary for intercity rail passenger transportation.

Third, the RPSA explicitly ordered freight railroads to grant preference to Amtrak trains over their own trains or any other customers in the use of any given line of track, junction, or crossing.

Fourth, the RPSA gave the ICC the authority to intervene if Amtrak and the host freight railroad could not agree on the compensation due the owner for Amtrak's access. However, a 1973 ICC decision that ordered Amtrak to pay a rate of compensation greater than incremental or avoidable cost was overridden by a 1973 amendment to the RPSA, which allowed Amtrak to pay no more than the incremental costs of the owning freight railroad caused by Amtrak's use of the tracks.

Railroads that refused to accept the statutory terms offered in the RPSA were required to continue their passenger operations — despite any losses they would incur — for at least four more years. Thereafter, they could seek relief before regulatory agencies, but received no guarantee that they would be permitted to discontinue unprofitable service at that point. All but a few of the railroads accepted the terms of the RPSA and immediately turned over passenger operations to Amtrak, rather than face continuing losses and the uncertainty of the regulatory process.

Future Public Policy Directions

The special statutory privileges regarding its relationship with freight railroads that Amtrak has enjoyed over the past 30 years have amounted to a significant, mandatory, and inequitable subsidization of intercity passenger operations by freight railroads. As you consider the future of Amtrak and intercity passenger transportation, the freight railroads respectfully suggest that it is not possible to “develop a new, clear national policy for intercity passenger rail … that can have the broadest possible base of support,” in the words of FRA Administrator Allan Rutter, if these inequities are not addressed.

While passenger railroading is important to our country, it pales in comparison to the importance of freight railroading. Our privately-owned freight railroad system is a tremendous national asset. Freight railroads operating in the United States move more freight, more efficiently, and at lower rates than anywhere else in the world, according to Lou Thompson, the World Bank’s Railways Advisor. The safe, efficient, and cost-effective transportation service that freight railroads provide is critical to the domestic and global competitiveness of our nation. Indeed, freight railroads are responsible for over 40 percent of our nation’s intercity transportation service. Therefore, we must find the most effective way to provide the passenger services that America needs, but without burdening the freight rail system — operationally, financially, or in any other way.

Freight railroads have developed a series of principles regarding the future of intercity passenger rail service. Our principles call for future rail passenger public policy to acknowledge the extreme capital intensity of railroading and to ensure that railroads’ investment needs can be met. Policies which add to freight railroads’ already enormous investment burden, such as further saddling them with support of passenger rail infrastructure needs, or which reduce their ability to provide the quality service needed by their freight customers, must be avoided. To do otherwise would undercut our nation’s freight rail capabilities and be counterproductive in addressing our country’s congestion, environmental, safety, and economic concerns.

The freight railroad principles are outlined below.

1. Intercity passenger rail service on a broad scale simply is not profitable in this or any other country, and cannot exist without significant government subsidization.

For decades prior to Amtrak's creation, our nation's railroads learned the hard way how difficult it is to recover the full costs of passenger railroading. Although Amtrak was created as a for-profit entity, experience has shown that this is not achievable. No comprehensive passenger system in the world operates today without significant government assistance.

Once policymakers in the Administration, Congress, and the various states agree on the nature and extent of intercity passenger railroading in this country, they must be willing to commit public funds commensurate with that determination.

2. Freight railroads should receive full compensation for the use of their assets by intercity passenger operators.

As explained above, freight railroads do not profit from Amtrak's operations. Rather, for the past 30 years, freight railroads have heavily subsidized Amtrak by virtue of Amtrak's statutory right of priority access to freight railroads' tracks at incremental cost. An incremental cost basis does not come close to reflecting the full market value of Amtrak's access to the owning railroad's tracks because it does not cover the full operating, capital, and other costs freight railroads incur in hosting Amtrak trains.

This has become an especially important problem over the past decade, as freight railroads are increasingly required to expand the capacity of their networks to accommodate growing traffic volume. In certain locations, railroads are experiencing serious and growing capacity constraints. Ton-miles per mile of road owned, a useful measure of freight traffic density, has risen from 3.9 million in 1970 (when Amtrak was established) to 14.8 million in 2000 — a 279% increase. Largely because of this congestion, train "slots" on major freight corridors are as valued as gates and departure times at major airports or berths at ports. Moreover, because most shippers no longer carry large inventories, railroads must meet their customers' requirements for "just-in-time" or more predictable freight arrival. Consequently, asset utilization has become a crucial management tool and rail infrastructure, crews, communications, and customer satisfaction have come to depend on precise and efficient operations.

Thus, where Amtrak trains fill prized corridor "slots" at bargain prices, the result is a major cross-subsidy from freight to passenger service. It also limits the overall size of certain freight rail markets (because slots are not available to freight trains) and affects the reliability freight railroads can offer their customers.

Internal railroad studies have confirmed that the subsidies involved are substantial. For example, a few years ago, one railroad calculated that its annual subsidy to Amtrak exceeded $56 million per year — and this was without including certain major categories of costs, including the cost of delays to freight trains and the resulting dislocation of freight crews and locomotives.

It is interesting to note that when freight railroads run freight trains over the Northeast Corridor, which is owned by Amtrak, Amtrak charges the freight railroads fully allocated costs, not just incremental costs. In fact, the fees that freight railroads pay Amtrak are many times greater (on a per car basis) than the fees which freight railroads must accept from Amtrak. Thus, railroads are prohibited by statute from treating Amtrak the same way that Amtrak treats freight railroads. Freight railroads should be fully compensated for Amtrak's use of their property, on the same terms that Amtrak is compensated for use of Amtrak's property.

3. Freight railroads should not be expected to further subsidize intercity passenger rail service, either through new taxes or the diversion of existing taxes (notably the 4.3 cents per gallon deficit reduction fuel tax).

If policymakers determine that intercity passenger service provides essential public benefits, then the costs of the passenger service should be borne by the public, not by freight railroads. For 30 years, freight railroads have subsidized Amtrak. Forcing them to continue on this basis will seriously hinder freight railroads' ongoing efforts to provide safe, efficient, and cost-effective transportation service.

Indeed, to force freight railroads to continue to subsidize passenger operations would be supremely inequitable. Freight railroads are suppliers to Amtrak. As such, they should be treated the same as those who supply Amtrak with locomotives, passenger cars, diesel fuel, electricity, and provisions for the dining car. Nor should freight railroads be held to a loftier "public interest" standard. Highway contractors are not required or expected to bid below cost because highways are in the public interest. The same rules should apply to railroads.

The 4.3 cents per gallon deficit reduction fuel tax paid by railroads deserves special mention. This tax should be repealed — not diverted to any other purpose — so that freight railroads can channel these funds into needed infrastructure and equipment. Diverting this tax to fund intercity passenger rail would perpetuate the inequities faced by freight railroads, because they would continue to derive no benefit from a tax they pay but their primary competitors do not.

4. Amtrak should have as its business focus the safe transport of passengers. Therefore, subsidized passenger authorities, including Amtrak, should not have a statutory right to carry "mail and express," but should be required to negotiate arrangements in these areas with the right-of-way owners.

Amtrak was created as a passenger service company that, by focusing its management attention on passengers rather than on freight, would have an opportunity to resuscitate America's passenger trains. Congress intended for Amtrak to have freight operations only incidental to its passenger service. Nor did Congress envision Amtrak establishing and scheduling ostensibly "passenger" trains for the primary purpose of serving freight needs and carrying passengers as an incidental activity.

Indeed, allowing Amtrak to transport general freight traffic under the auspices of "mail and express" service should not be allowed.[5] This is especially so under the terms of access Amtrak currently enjoys regarding freight railroads' facilities. Because Amtrak currently need only cover freight railroads' incremental costs — with no requirement that Amtrak contribute to the owners' fixed costs or profit — allowing Amtrak (or any other passenger authority) to carry freight forces freight railroads to subsidize their own competitors. Moreover, given Amtrak's operating priority over freight railroad operations, allowing Amtrak to carry freight forces freight railroads to sacrifice their own competitive operational schedules in favor of Amtrak freight movements.

The special terms of access and other privileges granted Amtrak by the RPSA make sense only in the context of a clear-cut distinction between Amtrak's passenger activities and other railroads' freight operations. Permitting Amtrak to transport carload and trailerload movements of freight under its "express" authority obliterates that distinction.

Simply put, freight railroads fully appreciate Amtrak's current financial difficulties and understand the reasons underlying attempts to increase Amtrak's operating revenues and cost coverage. Amtrak, however, should not be allowed to offload its financial difficulties on the backs of the nation's freight railroads, which already heavily subsidize Amtrak operations.

5. Safety requirements and the integrated nature of railroading necessitate that intercity passenger rail be provided by one entity — Amtrak. Further, Amtrak's right of access, preferential access rates, and operating priority should not be transferred or franchised.

One of Amtrak's fundamental purposes was to amalgamate several hundred disjointed passenger trains operated by more than 20 individual carriers into a coherent intercity passenger rail system. It was envisioned that a single carrier would yield greater efficiency and innovation. This approach remains just as sensible today.

Moreover, the terms and conditions by which Amtrak uses freight-owned tracks were set by Congress more than 30 years ago under circumstances vastly different from today. As noted above, at that time freight railroads were losing hundreds of millions of dollars per year on passenger trains they were forced by the government to operate. In order to be relieved from these huge losses, freight railroads accepted terms covering Amtrak's use of their tracks that under other circumstances would have been unacceptable. Moreover, freight railroads did not agree to an "open door" policy and balkanized structure that would allow any number of state, regional, or local entities to claim access to their assets.

Further, freight railroads knew that Amtrak 's obligations were, in essence, the obligations of the United States and that Amtrak would be operated safely and professionally. Should Amtrak intercity services be transferred to other passenger operators, it is unclear under what circumstances the transfer would be made and what characteristics would apply to the operators. For example, private entities might have

[5] Mail and express traffic commonly refers to expedited delivery service involving small shipments.

different degrees of financial backing; public authorities might or might not enjoy the full faith and credit of their sponsoring states; and some prospective passenger rail operators might be less committed to safety and sound operating standards than Amtrak.

If others are asked to provide Amtrak-like services, freight railroads must retain the right to negotiate terms (at arms length, free of governmental coercion) under which those providers will gain access to the freight railroad's right of way. Freight railroads must become satisfied that acceptable operating practices and dedication to safety will be observed before they allow use of their facilities.

Finally, freight railroads view the granting of statutory access to other passenger operators to be an unconstitutional "taking" of private property.

6. Amtrak's present obligations, notably those under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, must not be shifted to the freight rail industry.

Railroad employees and retirees are not covered by Social Security. Instead, they are covered by Railroad Retirement, a government sponsored and managed pension plan funded by payroll taxes on railroad employers and employees. Railroad Retirement covers the full rail industry, including freight, Amtrak, and commuter railroads; rail labor and trade organizations; rail lessor companies; and miscellaneous railroad affiliates.

Like Social Security, Railroad Retirement is a pay-as-you-go system: payroll taxes for current employees are used to provide current retiree benefits. Railroad Retirement is also a pooled system in which all rail participants contribute at the same statutory rates, all rail industry employees receive standardized retirement and survivor benefits based upon their years of service and earnings, and participating employees are assured of benefits regardless of the fate of their particular employers.

The integrity of such a system is based upon *all* participating entities contributing based on the current number of active workers employed. It is inequitable for a single firm, especially one as large as Amtrak (which accounts for approximately 10 percent of the rail industry work force), to suddenly be granted special relief from a pooled, pay-as-you-go system. Simply removing Amtrak from the Railroad Retirement system, in whole or in part, would force the remaining participants — primarily freight railroads — to sharply increase their contributions to maintain the viability of the system.

7. Future high-speed passenger rail corridors should be separate, dedicated, and "sealed."

"High speed" rail service is envisioned by many to be a primary component of future intercity passenger rail operations. It must be acknowledged that the expansion of high-speed passenger rail service throughout the United States presents serious challenges. To operate safely, high-speed passenger rail operations require the construction of separate, dedicated tracks. Further, grade crossings must be eliminated (either through closure or through the construction of highway underpasses or overpasses). These are exceedingly expensive undertakings and will require firm, continued commitments by the appropriate authorities, but they are necessary for successful implementation of high-speed projects.

<u>The National Defense Rail Act</u>

The freight railroads are pleased that certain sections of the proposed National Defense Rail Act (S. 1991) are consistent with the freight railroads' principles outlined above.

First, at its heart, S. 1991 recognizes the inherent need for public subsidization of intercity passenger rail, since no system in the world is financially self-sustaining.

Furthermore, the level of subsidy recognizes that the current level of funding falls short of what is needed.

Second, the proposed legislation recognizes the value of a harmonized intercity passenger system which is operated by a single entity.

Third, S. 1991 recognizes Amtrak's obligation to continue its pro rata funding of the pooled, pay-as-you-go Railroad Retirement System. To disregard this obligation would have severe implications for the other freight and passenger railroad participants of the industry system.

Fourth, the legislation appropriately increases to $35 billion the authorization of the Railroad Rehabilitation and Improvement Financing (RRIF) program and removes the unrealistic lender of last resort barrier to implementation.

Finally, S. 1991 promotes railroads' ability to ensure safe and secure operations by permitting railroad police officers to enforce laws on other railroads' property.

There are, however, provisions of S. 1991 which are inconsistent with what the freight railroads believe is in the best interests of both freight and passenger railroads, and the national economy in general.

First, while S. 1991 appears to recognize the need for investments in grade crossings, there appears to be no requirement that grade crossings on high-speed passenger rail corridors be eliminated and that high-speed rail operations be performed over separate, dedicated tracks. Freight railroads submit that these are threshold requirements for the high-speed services contemplated in S. 1991. Safety and economic requirements preclude joint freight and high-speed passenger operations, and acknowledgement of this foundational criterion allows for a more realistic view of the true costs involved.

Second, the Section 130 grade crossing program was designed to address a different highway safety need than the establishment of sealed corridors for high speed passenger rail. Consequently, we would like to continue to work with this Committee on how best to address this grade crossing program.

Third, if the United States is to have a responsive and efficient intercity rail passenger system, it must come about through a realistic appraisal of what is needed and the provision of public funding sufficient to build and maintain that system. Freight railroads must be treated fairly and equitably. In this regard, the encouragement by S. 1991 for Amtrak to develop revenue sources from rail freight cargo can only serve to distract Amtrak from its appointed public purpose and generate conflict with the private sector freight railroad companies.

Finally, the freight railroads can discern no benefit from, and see considerable downside to, positioning the Surface Transportation Board between the freight railroads and Amtrak with regard to issues concerning Amtrak's on-time performance. The current arrangement of contractual incentives and penalties is eminently more efficient than, and preferable to, a regulatory construct.

Summary

Congress has before it a difficult mission: to fashion a realistic, fair, and workable solution to the serious problems facing intercity passenger rail in the United States. In reaching that solution, we strongly urge you to review the principles above in order to ensure that freight railroads continue to be a vital part of the North American economy.

Freight railroads look forward to working cooperatively with this Committee, with Amtrak, and with others to achieve this worthy goal.